

HOUSE JOINT MEMORIAL 42

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

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A JOINT MEMORIAL

REQUESTING THE UNITED STATES SECRETARY OF THE INTERIOR AND THE UNITED STATES ATTORNEY GENERAL TO SUPPORT A COOPERATIVE SCIENCE-BASED FEDERAL-STATE RESOLUTION OF ENDANGERED SPECIES ACT LITIGATION ON THE RIO GRANDE AND THE PECOS RIVER.

WHEREAS, New Mexico is an arid state and its desert rivers are the lifeblood of its citizens; and

WHEREAS, litigation under the federal Endangered Species Act has been initiated on the middle Rio Grande basin seeking protection for the Rio Grande silvery minnow, a species listed as endangered by the United States fish and wildlife service; and

WHEREAS, litigation under the Endangered Species Act has also been initiated on the Pecos river basin, seeking

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1 protection for the Pecos bluntnose shiner, a species listed as  
2 threatened by the United States fish and wildlife service; and

3 WHEREAS, the Rio Grande and the Pecos river are desert  
4 stream systems, with highly variable flows and unavoidable  
5 intermittency; and

6 WHEREAS, these rivers are also fully appropriated for  
7 beneficial uses and have been so for nearly one hundred years;  
8 and

9 WHEREAS, the extensive systems of the United States bureau  
10 of reclamation's and the United States army corps of engineers'  
11 projects on these rivers, made possible by a history of  
12 cooperation and partnership between New Mexico and the United  
13 States, have been a major factor in the ability of New Mexicans  
14 to develop these beneficial uses while complying with the  
15 downstream water delivery requirements of interstate stream  
16 compacts; and

17 WHEREAS, the parties to these lawsuits have made  
18 extraordinary efforts to provide additional water to the rivers  
19 for protection of the silvery minnow and the bluntnose shiner  
20 habitats; and

21 WHEREAS, the quantity of supplemental water provided for  
22 the silvery minnow in August and September 2000 exceeded the  
23 entire native flows of the Rio Grande entering the middle Rio  
24 Grande before any diversion for human activities or riparian  
25 uses or conveyance losses, and in essence a new Rio Grande was

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1 created for the fish by draining reservoirs; and

2 WHEREAS, New Mexico has been enjoined by the United States  
3 supreme court to annually deliver all of New Mexico's annual  
4 delivery obligation pursuant to the Pecos River Compact to  
5 Texas and has expended approximately fifty million dollars  
6 (\$50,000,000) to date in penalties and programs to assure  
7 deliveries; and

8 WHEREAS, provisions for supplemental water for the  
9 bluntnose shiner in the Pecos river resulted in additional  
10 water depletions that were not offset by the United States and  
11 that have contributed to a serious shortfall in New Mexico's  
12 deliveries to Texas in 2000; and

13 WHEREAS, operation of the Pecos river system in 2001 as it  
14 was operated in 2000 may cause New Mexico to violate the United  
15 States supreme court's injunction, with enormous economic costs  
16 to New Mexico and its water users; and

17 WHEREAS, the extraordinary efforts in 2000 to provide  
18 water for these endangered and threatened species are not  
19 hydrologically sustainable due to the lack of water in these  
20 desert rivers; and

21 WHEREAS, New Mexico sued the United States fish and  
22 wildlife service for violating federal law in its designation  
23 of critical habitats with the result that a federal judge has  
24 condemned the United States fish and wildlife service's action  
25 as the essence of arbitrary and capricious conduct; and

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1           WHEREAS, New Mexico believes that viable long-term  
2 solutions to the problems of the silvery minnow and bluntnose  
3 shiner can only be achieved through a cooperative process based  
4 on adequate science and open partnerships pursued in good faith  
5 and recognizing the hydrologic realities of these desert  
6 rivers; and

7           WHEREAS, in 1999, New Mexico convened the middle Rio  
8 Grande Endangered Species Act workgroup for the purpose of  
9 protecting and improving the status of endangered species while  
10 protecting existing and future water uses and proceeding in  
11 compliance with all applicable laws; and

12           WHEREAS, a memorandum of understanding was signed by  
13 federal, state, local and private participants of the  
14 Endangered Species Act workgroup to develop a long-term  
15 cooperative program for the middle Rio Grande, initiate  
16 recovery of the silvery minnow in the middle valley and secure  
17 initial funding for the program; and

18           WHEREAS, the Endangered Species Act workgroup has  
19 fulfilled its commitments under the memorandum of  
20 understanding, implementing initial recovery efforts, securing  
21 initial federal and state funding and producing a draft  
22 cooperative agreement that is now being reviewed by all  
23 participants; and

24           WHEREAS, the legislature finds that the cooperative  
25 program represents the best opportunity for providing a long-

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1 term solution to the complex problem of accommodating the needs  
2 of threatened and endangered species, consistent with the  
3 protection of private property rights, and expresses its  
4 continued support for this non-litigative solution; and

5 WHEREAS, the lack of a similar program on the Pecos river  
6 handicaps the parties' abilities to reach a solution that  
7 protects the species consistently with private property rights  
8 without impairment of New Mexico's ability to meet its  
9 interstate compact obligations;

10 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
11 STATE OF NEW MEXICO that the United States secretary of the  
12 interior and the United States attorney general be requested to  
13 direct their agencies, including the United States fish and  
14 wildlife service and the United States bureau of reclamation,  
15 to:

16 A. recognize that the imposition of a requirement  
17 of continuous flows throughout these desert rivers is in  
18 conflict with the hydrologic reality;

19 B. recognize that a long-term solution to these  
20 problems cannot be achieved through the imposition of  
21 hydrologically unrealistic flow requirements and will require a  
22 true collaborative, open and science-based process;

23 C. direct that the federal agencies promptly and  
24 completely disclose to all interested parties all of the  
25 biological and hydrologic data that bear on these problems and

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1 direct those agencies to cooperate and collaborate with New  
2 Mexico and other parties and allow opportunities for these  
3 parties to participate in all data collection and analysis  
4 efforts that they may be able and willing to join or pursue  
5 independently;

6 D. recognize that both short-term actions and long-  
7 term solutions must:

8 (1) respect the long-established property  
9 rights of both Indian and non-Indian water users on these  
10 stream systems so that there is no taking or impairment of  
11 these rights without due process and fair compensation;

12 (2) be accomplished within the state law of  
13 water rights and water administration; and

14 (3) not impair the ability of the state to  
15 make its compact delivery obligations as required by federal  
16 law and supreme court orders.

17 E. commit to the ongoing cooperative process on the  
18 middle Rio Grande as the only vehicle capable of achieving a  
19 workable long-term solution for the silvery minnow; and

20 F. commit to the establishment of a similar  
21 cooperative process for the long-term solution of the bluntnose  
22 shiner problems on the Pecos river; and

23 BE IT FURTHER RESOLVED that copies of this memorial be  
24 transmitted to the United States secretary of the interior, the  
25 United States attorney general and the New Mexico congressional

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